JAYASANKARAN

v.

PUBLIC PROSECUTOR & ANOTHER CASE

HIGH COURT MALAYA, KUALA LUMPUR
MOHD. AZMI J
[CRIMINAL APPEAL NOS. 138 & 181 OF 1981]
15 JUNE 1982

CRIMINAL PROCEDURE: *Notice of appeal and petition signed by solicitor and not by the appellant - Effect of - Whether it is sufficient in law for the petition of appeal to be signed only by the appellant's solicitors.*

In these two criminal appeals preliminary objection were raised on the grounds that the appeals were not properly brought before the Court as they were not in compliance with s. 307 of the Criminal Procedure Code (F.M.S. Cap. 6). The Deputy Public Prosecutor contended that both the notice of appeal and the petition of appeal must be signed by the appellant. In the appeals both the appellants had signed the notice of appeal but not the petition of appeal which was signed only by their respective solicitors.

Held:

[1] When the accused person is exercising his legal right of appeal he must sign both notice of appeal and petition of appeal. It is not sufficient that he only signs the notice of appeal and instructs his advocate and solicitor to sign the petition of appeal on his behalf.

[2] Practice Note 2/60 issued by the Chief Registrar on the direction of the Chief Justice is consistent with the true construction of sub-sections (i) and (iv) of s. 307 Criminal Procedure Code.

[3] A petition signed by anyone else including an advocate on behalf of the appellant is not a compliance with the requirements of subsections (i) and (iv) of s. 307, Criminal Procedure Code.

[4] In the circumstances both the appeals are struck out as they were not properly brought before the Court.

[Both appeals struck off.]

Cases referred to:

Pitting bin Hj. Mohd. Ali v. PP [1979] 2 MLJ 136
Toh Yew Sing & Ors. v. PP [1980] 2 MLJ 215
Krishnan & Anor. v. PP [1981] 1 MLJ 91
Doresamy v. Public Services Commission [1971] 2 MLJ 127

Legislation referred to:

Criminal Procedure Code, ss. 173, 307, (i), (ii), (iii), (iv), 308, 402A

C.A. No. 138/81
For the appellant - R.R. Chelliah
For the respondent - Phang Ah Hee

C.A. No. 181/81
For the appellant - Manjeet Singh
For the respondent - Phang Ah Hee

JUDGMENT

Mohd. Azmi J:

At the commencement of these two criminal appeals, the Deputy Public Prosecutor, who appeared for the respondents, took preliminary objection on the ground that the appeals were not properly brought before the Court for non-compliance with the provisions of s. 307 of the Criminal Procedure Code. It was the contention of the learned DPP that both the notice of appeal and petition of appeal required to be lodged within the specified time under subsections (i) and (iv) of s. 307, must be signed by the appellant. In the present appeals, both the appellants had signed the notice of appeal but not the petition of appeal. In Jayasankaran's case, both he and his solicitor had signed the notice of appeal but only his solicitor had signed the petition. In Narayansamy's case, only the appellant had signed the notice and only his solicitor had signed the petition. After hearing arguments by both Counsel for the appellants, I upheld the DPP's objection and struck out the appeals. I now give my reasons.

The right of a person to appeal to the High Court from the Subordinate Court is conferred by sub-section (i) of s. 307 Criminal Procedure Code which provides that

> .... any person who is dissatisfied with any judgment, sentence or order pronounced by any Magistrate's Court in a criminal case or matter to which he is a party may prefer an appeal to the High Court against such judgment, sentence or order .... by lodging, within ten days from the time of such judgment, sentence or order being passed or made, with the clerk of such Magistrate's Court a notice of appeal in triplicate addressed to the High Court ...

This is followed by sub-section (ii) which requires every notice of appeal to contain an address at which any notices or documents connected with the appeal may be served upon the appellant or upon his advocate, and sub-section (iii) which requires the Court appealed from to serve upon the appellant or his advocate a signed copy of the grounds of decision in the case. Then comes sub-section (iv) - the subject-matter of the preliminary objection in the present appeals - which provides:

> Within ten days after the copy of the grounds of decision has been served as in the last preceding sub-section provided, the appellant shall lodge with the clerk of the Magistrate's Court at which the trial was held a petition of appeal in triplicate addressed to the High Court.

It should be observed that both the notice and petition of appeal are addressed to the High Court Judge from the appellants. As such, it is inherent that the documents must be signed. I cannot therefore agree with Mr. Manjeet Singh's submission on behalf of Narayansamy that the notice of appeal and petition of appeal required to be lodged by sub-sections (i) and (iv) need not be signed by anyone. To my mind, the only issue is whether such documents must be signed by the appellants themselves. In other words, is it sufficient for the notice or the petition to be signed by their advocates and solicitors? To be more specific in the present instance, is it sufficient in law for the petition of appeal required to be lodged under sub-section (iv) to be signed only by the appellants' solicitors? As stated earlier, the petition, as in the case of notice of appeal, is addressed to the High Court by the appellants. The notice of appeal signifies their dissatisfaction against the trial Court's judgment sentence or order; whilst the petition of appeal sets out the grounds for their dissatisfaction. The right to appeal to the High Court under s. 307 is given to "any person who is a party to the criminal case or matter and who is dissatisfied" with any judgment, sentence or order of the Subordinate Courts, and it seems clear from the various provisions under Part VII, Chapter

XXX of the Criminal Procedure Code that the words "any person" in sub-section (i) of s. 307 read in conjunction with the words "the appellant" in sub-section (iv) of the said section, can only refer to the accused person or the Public Prosecutor or any person who is a party in a criminal matter, and to no one else. I am therefore of the view that when the accused person is exercising his legal right of appeal he must sign both notice of appeal and petition of appeal. It is not sufficient that he only signs the notice of appeal and instructs his advocate and solicitor to sign the petition of appeal on his behalf. The actual preparation and filing with the clerk of the Magistrate's Court of the notice and petition can of course be done by their advocates and solicitors or, for that matter, by any third person, but both documents must first be signed by them, since the right of appeal to the High Court is given to them personally and to no one else. The advocate and solicitor of an appellant is not a party to the criminal case and, even if he is dissatisfied with the trial Court decision, he has no right to appeal. Just as the accused's right of pleading guilty or claiming to be tried to a charge under s. 173 Criminal Procedure Code cannot be delegated to his advocate or solicitor, so is the right of an accused person to appeal. In my view, the requirement that the accused person should sign the petition of appeal is not unfair. After signing and lodging the notice of appeal, an appellant for any reason may change his mind, particularly after a copy of the grounds of decision has been served on him under sub-section (iii) of s. 307. By signing the petition of appeal, it does not only signify his continued intention to appeal and not merely that of his solicitor, but at the same time in practical terms, it would assist the High Court in serving without delay the notice of hearing to the appellant. Unlike the period between lodging of petition of appeal and the date of hearing, in an increasing number of cases, the lapse of time between the lodging of notice of appeal and the transmission of appeal record to the High Court under s. 308 has resulted in difficulties in locating the appellants. Thus, apart from ensuring that the right of appeal is exercisable only by the accused himself throughout its prosecution, the signing of the petition by him would also expedite in the disposal of the appeal by the avoidance of adjournments due to non-service of the notice of hearing. There being two principal stages under s. 307 in the prosecution of an appeal, I rule that the accused must himself exercise his right firstly under sub-section (i) and, secondly, under sub-section (iv).

In fact, as early as 1960, Practice Note No. 2 of 1960 issued by the Chief Registrar on the direction of the Chief Justice, has directed that notice of appeal and petition of appeal must be signed by the appellant himself, and where Counsel is retained, both the appellant and the Counsel must sign the documents. Advocates retained after filing of petition of appeal must at once inform the High Court of such retainer. In my view, the Practice Note is consistent with the true construction of sub-sections (i) and (iv) of s. 307 Criminal Procedure Code. The matter was also considered in *Pitting bin Hj. Mohd. Ali v. PP* [1979] 2 MLJ 136, and *Toh Yew Sing & Ors. v. PP* [1980] 2 MLJ 215. In *Pitting* case whereas in our case - the petition was only signed by the appellant's solicitors, BTH Lee J held that the right to appeal was given by sub-section (i) to any person who is dissatisfied with any judgment, sentence or order pronounced by any Magistrate's Court in a criminal case or matter to which he is a party. Since Counsel or advocate for the appellant was not such a person, there was complete failure to conform with the provision of sub-section (iv). Similarly, in *Toh Yew Sing & Ors. v. PP*, Tan Chiaw Thong J held that the notice of appeal and the petition of appeal must bear the signature, thumb-print or mark of the appellant. A petition signed by anyone else including an advocate on behalf of the appellant is not a compliance with the requirements of sub-sections (i) and (iv) of s. 307 Criminal Procedure Code.

By analogy, Mr. Manjeet Singh has however referred to the provision of s. 402A Criminal Procedure Code regarding pre-trial notice required to be given by the accused to the prosecution where he intends to put forward a defence of *alibi*. In *Krishnan & Anor. v. PP* [1981] 1 MLJ 91, it was held by the Federal Court, that the trial Judge was wrong in rejecting the notice of *alibi* signed by the solicitor. I think there is no analogy between our case and *Krishnan* case. Section 402A does not concern the right of an accused person, but it deals with admissibility of evidence, whereas s. 307 deals with a right exercisable only by specific person, namely, a person who is dissatisfied with a decision of the Subordinate Court to which he is a party. Similarly, Mr. R.R. Chelliah for Jayasankaran had referred to the case of *Doresamy v. Public Services Commission* [1971] 2 MLJ 127, where he argued that Raja Azlan J (as he then was) held that under reg. 13(1) of the Public Services Disciplinary Board Regulations 1967, the words "a person" should include his advocate and solicitor. With respect, the learned Judge there was dealing with a person's right to legal representation and he rightly held that there was nothing in reg. 13(1) which excludes legal representation. As such, *Doresamy* case is no authority for the legal proposition that the words "any person" in sub-section (i) of s. 307 Criminal Procedure Code includes his advocate and solicitor. We are here dealing with the exercise of a right to appeal and not with the right to legal representation during the hearing of an appeal.

In the circumstances, I struck out both these appeals as they were not properly brought before this Court.

Also found at [1982] CLJ 423